

MISSOURI COURT OF APPEALS WESTERN DISTRICT

**IN THE MATTER OF FORECLOSURE LIENS FOR DELINQUENT TAXES BY
ACTION IN REM: COLLECTOR OF REVENUE BY AND THROUGH THE
DIRECTOR OF COLLECTIONS FOR JACKSON COUNTY, MISSOURI,**

Respondents,

v.

**PARCELS OF LAND ENCUMBERED WITH DELINQUENT LAND TAX LIENS;
REALTY ACQUISITIONS, LLC,**

Appellant.

DOCKET NUMBER WD75353

Date: December 24, 2013

Appeal from:
Jackson County Circuit Court
The Honorable Michael W. Manners, Judge

Appellate Judges:
Division Two: Alok Ahuja, P.J., Karen King Mitchell and Anthony Rex Gabbert, JJ

Attorneys:
Jacqueline A. Somer, Kansas City, MO for Manager of the Division fo Revenue of Jackson County, MO; Michael J.Gallagher, Kansas City, MO for Realty Acquisitions, LLC, for appellant. Ryan T. Fry, Blue Springs, MO for Beemer Construction Co.; Ryan C. Westoff and Robert M. Pitkin, Kansas City, MO for Seal-O-Matic, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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ACTION IN REM: COLLECTOR OF REVENUE BY AND THROUGH THE
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WD75353

Jackson County

This appeal involves a parcel of property located in Blue Springs, on which Respondents Beemer Construction and Seal-O-Matic Paving had performed construction work. Neither Respondent had been paid in full for its work, and both filed mechanic's lien statements with the Clerk of the Circuit Court of Jackson County in 2007 to perfect mechanic's liens for the unpaid amounts. Beemer's mechanic's lien statement asserted that it was owed \$164,879.76, while Seal-O-Matic's mechanic's lien filing stated that it was owed \$187,494.80.

At the same time, real property taxes on the property became delinquent, and Jackson County commenced proceedings to foreclose on the property to collect the unpaid taxes. The County notified the property's owner of the filing of the tax foreclosure action, and of the tax foreclosure sale; it provided no notice of either the lawsuit, or the tax sale, to Beemer or Seal-O-Matic.

After they learned of the tax foreclosure sale, Beemer and Seal-O-Matic moved to intervene in the tax foreclosure action, and opposed the confirmation of the tax foreclosure sale, arguing that they were constitutionally entitled to notice of the tax foreclosure sale due to their recorded mechanic's liens. The circuit court set aside the tax foreclosure sale, and the purchaser of the property at the tax foreclosure sale (Appellant Realty Acquisitions) appeals.

AFFIRMED.

Division Two holds:

While the notice-of-sale provided by the County to the property's owner may have complied with statutory requirements, the County was also required to provide notice to Beemer

and Seal-O-Matic under the Due Process Clause contained in the Fourteenth Amendment to the United States Constitution. Under the United States Supreme Court's decision in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), the Respondents each possessed "a substantial property interest that is significantly affected by a tax sale." *Id.* at 798. Once their liens were recorded with the circuit court clerk, those liens were assignable, they had priority even over certain liens which were perfected earlier, and the tax sale had the effect of completely extinguishing Respondents' mechanic's lien claims, leaving them only with a claim against the surplus proceeds of the tax sale.

Respondents' identities and addresses were "reasonably ascertainable" by the County. Under § 429.080, RSMo, a mechanic's lien claimant must file "a just and true account of the demand due" with the clerk of the circuit court for the relevant county "within six months after the indebtedness shall have accrued." The public filing of Respondents' mechanic's lien statements was sufficient to put the County on notice of their identity and addresses.

Before: Division Two: Alok Ahuja, P.J., Karen King Mitchell and Anthony Rex Gabbert, JJ

Opinion by: Alok Ahuja, Judge

December 24, 2013

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